IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.775 OF 2006

Shri Ashok B. Dhongade and ors. ...Appellants

v/s

Mrs Kondabai Sopan Padekar and ors. ...Respondents

Mr S.A. Sawant for Appellants.

Mr S.N. Chandrachood for Respondent No.1.

CORAM : D.K. DESHMUKH J.

DATE : 10TH AUGUST 2007.

P.C. :-

1. By consent of parties, the appeal is heard finally.

2. The substantial question of law that arises for consideration is that when the Trial Court has dismissed the suit by holding that the suit of the plaintiff was barred by the law of limitation, was the Appellate Court justified in reversing the judgment and decree passed by the Trial Court and decree the suit of the plaintiff without considering the question whether the suit was barred by the law of limitation ? I have heard learned counsel appearing for both the sides. Perusal of the judgment of the Trial Court shows that though there was no issue framed by the Trial Court as to whether the suit is within the period of limitation, in paragraph 11 of the judgment of the Trial Court there is a clear finding recorded that the suit of the plaintiff is barred by the law of limitation. The suit of the plaintiff was dismissed by the Trial Court. The plaintiff, feeling aggrieved by that judgment and decree, filed first appeal. The first appeal has ben decided by the Appeal Court. The Appeal Court has decreed the suit. Perusal of the judgment of the appeal

Court shows that it has not at all applied its mind to the question whether the suit of the plaintiff was barred by the law of limitation. This clearly amounts to non-application of mind by the Appeal Court to a crucial aspect of the matter. In this view of the matter, in my opinion, it will be appropriate to set aside the judgment and decree passed by the appeal Court and remand the matter back to the First Appeal Court for de novo hearing and decision in accordance with law. In the result therefore, appeal succeeds and is allowed, the judgment and decree passed by the First Appeal Court in civil appeal No.506 of 2001 is set aside. That appeal is remanded back to the First Appeal Court for de novo hearing and decision in accordance with law. Civil application No.1076 of 2006 is disposed off.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary as true copy.

. Certified copy expedited.